

Serial No. 09/914,178

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REMARKS**Prior Office Action**

In the Office Action mailed on May 30, 2006, claims 21-31 were rejected under 35 U.S.C. 103(a) as being unpatentable over Parker U.S. (4,602,099) in view of Dyer et al (U.S. 5,994,383). Claims 21-31 were rejected under 35 U.S.C. 103(a) as being unpatentable over Singleton et al. (U.S. 5,547,657). Claim 30 was rejected under 35 U.S.C. 112, first paragraph.

The Invention

Applicants are claiming an oral rinse composition that comprises at least about 0.04% benzocaine, less than about 10% by weight carbomer, and a solvent system comprising water as a predominate solvent. In certain claimed embodiments the compositions comprise greater than 80%, or 90%, by weight water. Certain claimed embodiments are free of aliphatic alcoholic solvents or the solvent system consists essentially of water. In other claimed embodiments the compositions include a neutralizing agent so as to provide the rinses with a pH of about 8 or higher.

Prior Art

Parker discloses antirhinovirus agents and various means for delivering such agents. While Parker does disclose a mouthwash as a means for delivering the claimed agents, Applicants respectfully submit that Parker fails to disclose or suggest a mouthwash containing both benzocaine and carbomer, in addition to a solvent system where water is the predominant solvent in the wash.

Parker discloses benzocaine merely as one in an extremely long list of potential agents that may be combined with the antirhinovirus agents disclosed in Parker, in one form or another. Similarly, carbomers are mentioned only as a possible suspending agent amongst others listed. Applicants respectfully submit that selection of benzocaine from the long list of potential agents, in addition to selection of carbomers from the various suspending agents listed, and to then combine the two components at the claimed levels, all with no further suggestion from Parker, would require hindsight selection.

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The only solutions exemplified in Parker are Examples 11 and 21. While Example 11 utilizes water, it does not include benzocaine or carbomer. In addition, in contrast to claims where the compositions claimed by Applicants are free of aliphatic alcohol or consist essentially of water, Example 11 of Parker contains substantial amounts of both alcohol and polyethylene glycol. Example 21 contains none of the critical elements of Applicants' claimed compositions.

Singleton discloses mouth rinses that are freeze-thaw stable and that are prepared using non-alcoholic organic solvents, such as polyethylene and propylene glycols, as the sole solvents. Applicants respectfully submit that the term "non-alcoholic", as used in Singleton, means free of monohydric alcohols, not aqueous (Col. 1, ll 60-62). As such, Applicants respectfully submit that Singleton fails to disclose or suggest in any way solvent systems that are predominately or consist essentially of water.

Applicants respectfully submit that claims 21-31 are patentable and respectfully request a notice of allowance to that effect. Should the Examiner wish to discuss the Amendment Applicants' representative may be reached at 732-524-6201, Mon.-Fri, 9:00 am to 5:00 pm.

Respectfully submitted,

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